

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0780**

State of Minnesota,  
Respondent,

vs.

Connie Marie Robinson,  
Appellant.

**Filed June 12, 2023  
Reversed and remanded  
Ross, Judge**

Hennepin County District Court  
File No. 27-CR-21-8857

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney,  
Minneapolis, Minnesota (for respondent)

Frederick J. Goetz, Goetz & Eckland P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes,  
Judge.

**NONPRECEDENTIAL OPINION**

**ROSS, Judge**

The state charged Connie Robinson with first-degree controlled substance sale after officers pulled over the car in which she was a passenger and discovered nine pounds of cocaine strapped to the car's undercarriage. The jury heard testimony from officers that

they had received “information” that Robinson was traveling from Minnesota to Texas to purchase narcotics and bringing the narcotics back to Minnesota, and that when Robinson possessed narcotics she would sell them from a hotel room. Robinson could not challenge the source of this information—a nontestifying informant whose identity the state did not disclose. The jury found Robinson guilty, and the district court convicted her. Robinson appeals, arguing that admitting the “information” testimony violated her right to confront her accusers. She also raises two other evidentiary issues. We need not address Robinson’s other challenges because we conclude that allowing the officers’ testimony about “information” they received violated her confrontation right and that the violation was not harmless. We therefore reverse the conviction and remand for a new trial.

## **FACTS**

According to the record and factual statements in the parties’ motion papers in the district court, a confidential informant told Minneapolis police that Connie Robinson was a prominent cocaine dealer in the Twin Cities and that she made frequent trips from Minnesota to Texas and back, transporting drugs. The informant told Officer Jeffrey Werner that Robinson would soon be making another Texas drug run, and the informant gave the officer Robinson’s cell phone number. Officer Werner used that information to successfully apply for a search warrant allowing police to track Robinson’s movements. The tracking data showed that, in May 2021, Robinson was close to an Enterprise car-rental office where Robinson’s friend rented an SUV. Police monitoring the tracking data and surveilling the roadways saw that Robinson rode in the SUV to Texas and back to Minnesota within a three-day span. Police stopped the SUV when it reached Bloomington.

Officers seized the SUV and its occupants—Robinson in the passenger seat and a man (whom we call James in the interest of privacy) in the driver’s seat. Officers searched inside the SUV and found caffeine pills, a can of air freshener, a purse, and a suitcase containing men’s clothing. In the suitcase, officers found \$3,600 in cash stuffed inside a man’s shoe. Officers also searched the SUV’s undercarriage. There they found nearly nine pounds of uncut cocaine, which police estimated could be worth about \$500,000. Officers later searched Robinson’s home, where they found a revolver, ammunition, and two automated cash counters. The state charged Robinson with first-degree controlled substance possession with intent to sell and second-degree controlled substance possession. The state agreed to dismiss the second-degree charge before trial.

Before trial, Robinson moved *in limine* to exclude any hearsay statements that the confidential informant made to police, arguing that the statements would violate her Confrontation Clause rights. The prosecutor told the district court that the state intended to offer testimony indicating only that police had information that Robinson was under a narcotics investigation and that she was traveling to Texas. Based on the prosecutor’s representation, the district court denied Robinson’s motion.

At trial, the prosecutor drew witness testimony that instead provided incriminating details about the information the informant had revealed to police. The prosecutor foreshadowed the testimony during opening statements to the jury:

Now, over the course of this trial you will hear from several people, including Officer Jeffrey Werner, the lead investigator on this case. Officer Werner will tell you that he’s been involved in hundreds of narcotics investigations. And back in May of 2021, he was actively investigating the defendant for

drugs. Officer Werner will tell you that he was aware that the defendant was going to be traveling down to Texas *to pick up drugs*.

Robinson objected and moved for a mistrial. The district court overruled Robinson's objection and denied the motion, believing that the statement complied with its ruling *in limine*.

Officer Werner testified accordingly, saying, "I had information that Ms. Robinson was traveling from Minnesota to Texas and then returning *with suspected narcotics*." (Emphasis added.) Officer Werner also testified to explain why he did not investigate Robinson's home for drugs, disclosing that police had "information . . . as part of [the] investigation . . . *that when Ms. Robinson would be in possession of narcotics that she would have a hotel room where she would possibly distribute the narcotics from until they were gone*." Two other officers testified about the "information" that Officer Werner knew.

During closing arguments, the prosecutor again referenced the information. She countered potential speculation that Robinson was unaware that cocaine was attached under the car, remarking, "So there's two people involved in the stop, right, the defendant and [James]. Evidence on the defendant. Officers suspected she was going to Texas to pick up narcotics." The prosecutor also explained why officers did not suspect that Robinson was selling drugs out of her home, repeating, "[Officers] had information and suspected [Robinson] was selling out of a hotel room."

The jury found Robinson guilty of first-degree controlled substance sale. The district court convicted her and sentenced her to 65 months in prison. Robinson appeals.

## DECISION

Robinson identifies three alleged evidentiary errors to contest her conviction, but we address only one. She argues that allowing testimony that revealed details of what the informant told police violated her rights under the Confrontation Clause. Although we typically review evidentiary challenges to determine only whether the district court abused its discretion by admitting the evidence, we review *de novo* whether the admission of evidence violated Robinson's constitutional right to confront witnesses against her. *See State v. Sutter*, 959 N.W.2d 760, 764 (Minn. 2021). We will not reverse a conviction based on a Confrontation Clause violation if the violation is harmless beyond a reasonable doubt. *Id.* at 768. Our *de novo* review leads us to conclude that the testimony here violated Robinson's confrontation right and that the violation was not harmless beyond a reasonable doubt.

We first consider whether a violation occurred. The Confrontation Clauses of both the United States and Minnesota Constitutions ensure that a defendant has a right to confront the witnesses against her. U.S. Const. amend. VI; Minn. Const. art. I, § 6. An appellant makes a successful Confrontation Clause challenge if she establishes that the challenged statement was testimonial, the statement was admitted for the truth of the matter asserted, and the defendant could not cross-examine the out-of-court declarant. *Andersen v. State*, 830 N.W.2d 1, 9 (Minn. 2013) (citing *Crawford v. Washington*, 541 U.S. 36, 59 & n.9 (2004)). Without dispute, the confidential informant was the out-of-court declarant and was unavailable to testify. We therefore consider only whether the challenged

statements were testimonial and whether the statements were admitted for the truth of the matter asserted.

We easily conclude that the informant's statements to police, which the prosecutor and police repeated at trial, were testimonial. Statements "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial" fall within the class of testimonial statements. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009). A confidential informant reporting criminal activity to a police officer meets this definition. *See, e.g., United States v. Lopez-Medina*, 596 F.3d 716, 730 (10th Cir. 2010) ("A confidential informant's statements to a law enforcement officer are clearly testimonial."); *United States v. Cromer*, 389 F.3d 662, 675 (6th Cir. 2004) (concluding confidential informant's statements are testimonial because "[t]ips provided by confidential informants are knowingly and purposely made to authorities, accuse someone of a crime, and often are used against the accused at trial"). The statements by the informant to police here—that Robinson carried drugs from Texas to Minnesota and that she customarily sells the drugs from a hotel room—were therefore testimonial.

We also easily conclude that the state offered the informant's testimonial statements for the truth of the matters asserted in the statements. The state supreme court reasoned that an informant's statements were inadmissible hearsay when no other reason existed for "the officers' testimony about the substance of the informant's conversation which pointed directly to appellant's guilt of the crime for which he was on trial." *State v. Litzau*, 650 N.W.2d 177, 183 (Minn. 2002). It is true that the prosecutor here had provided an

appropriate reason to admit a generalized version of the informant's information and that this reason was not to suggest the truth of the matter in the statements. Specifically, the general information that Robinson was the subject of a narcotics investigation and that police knew she was traveling from Texas would have adequately explained the officers' "presence and conduct" related to why they were monitoring Robinson and why they stopped her car in Bloomington. *See id.* at 182 n.3. But the incriminating details the officers revealed through their testimony and that the prosecutor echoed during her closing argument were not so limited. That police had "information" that Robinson was carrying drugs back from Texas and that she commonly sold drugs from a hotel room was unnecessary to explain why police initiated the encounter. And any plausible doubt that the testimony was offered for the truth of the matter asserted evaporated with the prosecutor's reliance on the testimony during her closing argument. She suggested that the fact that "[o]fficers suspected she was going to Texas to pick up narcotics" was a fact the jury could rely on to find that the drugs were Robinson's rather than merely her traveling companion's. And the prosecutor intimated that the fact that officers "had information and suspected she was selling out of a hotel room" was a fact the jury could rely on to allay any doubts they might have from the absence of drugs in Robinson's home. The hearsay statements were plainly offered for the truth of the matters asserted in them to help the jury find that Robinson possessed the cocaine and that she intended to sell it. We repeat the admonition that "a police officer testifying in a criminal case may not, under the guise of explaining how [the] investigation focused on defendant, relate hearsay statements of

others.” *Id.* at 182 (quotations omitted). The statements violated Robinson’s confrontation right.

The only remaining question is whether this violation of Robinson’s right to confront witnesses was harmless beyond a reasonable doubt. We will conclude that a violation of a defendant’s right to confrontation is harmless beyond a reasonable doubt only if we are satisfied that the guilty verdict was “surely unattributable” to the confrontation-right violation. *State v. Wright*, 726 N.W.2d 464, 476 (Minn. 2007) (quotation omitted). In evaluating whether the surely unattributable standard is satisfied, we consider “the manner in which the evidence was presented, whether the evidence was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defense.” *Id.* (quotation omitted). Each of these factors leads us to conclude that the verdict was not surely unattributable to the violation.

The prosecutor made the “information” a focal point of the state’s case. “Where the evidence was aimed at having an impact on the verdict, we cannot say that the verdict was surely unattributable to the error.” *Litzau*, 650 N.W.2d at 184. The prosecutor referenced the evidence during her opening statement, elicited testimony about it from three of the state’s nine witnesses, and emphasized it during her closing argument and rebuttal as a reason to find Robinson guilty. The prosecutor presented the evidence in a manner that suggested the verdict could depend on it.

The prosecutor’s pretrial argument opposing Robinson’s motion to suppress evidence highlights the persuasive value the state assigned to the evidence that Robinson was under investigation for narcotics and that she was traveling to Texas:



[B]oth of those facts, I think, are extremely probative. In this case, Ms. Robinson – we have her phone pings drawing to Texas, but when she was pulled over it was a rental car not in her name, there are no DNA, no fingerprints, [James] was driving, and so it's very probative to have those two very general facts come in in this case to give the jury context, again, just that she was under a narcotics investigation and that she was going to Texas.

The prosecutor's representations characterizing even the limited evidence's importance to prove Robinson's guilt informs us that the prosecutor's use of the evidence that exceeded the properly limited scope of the hearsay testimony was highly persuasive.

And finally, Robinson did not effectively counter the evidence the officers gained from the informant and relayed during the trial. Because the district court's pretrial ruling had limited the evidence to the manner the prosecutor had represented she intended to present it, Robinson had no need to prepare evidence to counter the improper *Crawford* testimony that officers knew she would be carrying drugs from Texas and that she commonly sold drugs from a hotel room. That she did not effectively counter the evidence supports our conclusion that the verdict is not surely unattributable to the violation of Robinson's Confrontation Clause rights.

Because the trial was administered in a manner that violated Robinson's right to confront witnesses and the violation was not harmless, we reverse the conviction without addressing the other trial issues Robinson raises. And we remand for a new trial.

**Reversed and remanded.**